

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LATASHA WINKFIELD, as an
individual and as guardian ad
litem and mother of Jahi McMath,

Plaintiff,

v.

CHILDREN'S HOSPITAL & RESEARCH
CENTER AT OAKLAND; DR. DAVID
DURAND,

Defendants.

No. C 13-5993 SBA

ORDER DEFERRING IN
PART AND DENYING
IN PART
PLAINTIFF'S
APPLICATION FOR A
TEMPORARY
RESTRAINING ORDER
(Docket No. 2)

_____/

On December 30, 2013, Plaintiff Latasha Winkfield moved ex parte for a temporary restraining order (TRO) seeking to keep Jahi McMath on cardio pulmonary support and to insert a gastric tube and a tracheostomy tube to allow her to be transferred to another facility. Defendants Children's Hospital & Research Center at Oakland and Dr. David Durand filed an opposition. On the same day, the Alameda County Superior Court entered an order extending its TRO requiring Defendants to maintain the status quo of treatment provided to McMath, but declining to order insertion of a gastric tube or a tracheostomy tube.

To qualify for a temporary restraining order, the moving party must demonstrate "(1) a likelihood of success on the merits; (2) a significant threat of irreparable injury; (3) that the balance of hardships favors the applicant; and (4) whether any public interest favors granting an injunction." Raich v. Ashcroft, 352 F.3d 1222, 1227 (9th Cir. 2003); see also Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008).

1 Alternatively, a temporary restraining order could issue where
2 "the likelihood of success is such that serious questions going to
3 the merits were raised and the balance of hardships tips sharply
4 in plaintiff's favor," so long as the plaintiff demonstrates
5 irreparable harm and shows that the injunction is in the public
6 interest. Alliance for the Wild Rockies v. Cottrell, 632 F.3d
7 1127, 1131 (9th Cir. 2011) (citation and internal quotation and
8 editing marks omitted).

9 After considering the papers and the impact of the
10 continuation of the state court's TRO, the Court defers
11 consideration of the application with respect to maintaining the
12 status quo of treatment provided to McMath, and DENIES Plaintiff's
13 application with regard to insertion of a gastric tube and a
14 tracheostomy tube. The Court will consider a motion for
15 preliminary injunction at a hearing before Judge Armstrong on
16 January 7, 2014 at 1:00 PM. Plaintiff may file a brief no later
17 than January 2, 2014 at 12:00 PM. Defendants may file a response
18 no later than January 3, 2014 at 5:00 PM. Plaintiff may file a
19 reply no later than January 6, 2014 at 9:00 AM.

20 IT IS SO ORDERED.

21
22 Dated: 12/30/2013

23
24
25
26
27
28

CLAUDIA WILKEN
United States District Judge